IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

BHAGA RAM VS STATE OF RAJASTHAN & ORS.

S.B.CIVIL WRIT PETITION NO.3086/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 24th July, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.R.S. Saluja, for the petitioner.
Mr.Rameshwar Dave, Dy.G.A., for the respondents.

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The petitioner in the present writ proceedings has challenged the order dated 6.9.2000 (Annex.2) whereby penalty of compulsory retirement was awarded to the petitioner with the direction that he shall not be entitled to any pay and allowances for the period from 20.6.1997 to 27.12.1999, during which period he remained out of employment on account of above penalty.

Briefly stated facts of the case are that while the petitioner was serving the respondent Department as Police Constable he on 29.5.1995 went to police Station, Mandore and misbehaved with one Shri Himmat Singh, Asstt. Sub Inspector of Police, who had arrested one Shri Kishan Lal in FIR No.73/1993. The petitioner was annoyed with him on account of fact that Kishan Singh was his relative. On charge of such misconduct of the petitioner, the disciplinary inquiry was conducted against him and on this being found proved against him, the disciplinary authority imposed penalty of his removal from service vide order dated 20.6.1997. The petitioner challenged this order before the appellate authority, i.e., Dy. Inspector General of Police, Jodhpur Range, Jodhpur, but the appellate authority vide order dated 13.11.1997 dismissed the appeal of the petitioner. The petitioner thereafter filed writ petition before this Court being S.B. Civil Writ Petition No.301/1998, which was also dismissed by the learned Single Judge vide order dated 27.1.1998. Thereafter, against the order dated 27.1.1998 passed by the learned Single Judge, the petitioner preferred appeal before the Division Bench of this Court. The Division Bench allowed the said appeal vide judgment dated 15.9.1999 and set aside the order of penalty dated 20.6.1997 only on the question of penalty and remanded the matter back to the disciplinary authority for passing fresh order taking into consideration his previous

records and after affording him an opportunity of hearing. The Division Bench also directed that the question of consequential benefits for the period from 20.6.1997 till the date of the judgment of the Division Bench shall also be decided by the disciplinary authority alongwith question as to how the period of suspension would be treated while passing the order afresh. The petitioner was, thereafter, reinstated in service vide order dated 23.12.1999, pursuant to which, he joined his services on 28.12.1999. The disciplinary authority, in these circumstances, passed a fresh order dated 6.9.2000 (Annex.2), but this time, imposed a lessor penalty of compulsory retirement. The disciplinary authority while taking into consideration the length of service of the petitioner took a lenient view and imposed punishment of compulsory retirement from service and further held that petitioner will not be entitled to any pay or allowance for the period from 20.6.1997 to 27.12.1999, during which he remained out of service on the principle of no work no pay. However, the disciplinary authority directed that the petitioner shall be entitled to the salary and allowances etc from the date of his reinstatement on 28.12.1999 till the order of penalty was passed on 6.9.2000. It is against this order denying salary and allowances etc. for the period from 20.6.1997 to 27.12.1999 that the petitioner has preferred the present writ petition.

The respondents in reply to the writ petition have contested the claim of the petitioner for salary of the aforesaid period. It is contended that disciplinary authority after taking into consideration, length of his past service has already taken a lenient view in awarding lessor penalty of compulsory retirement and has rightly directed to pay salary and allowances after his reinstatement in service on 28.12.1999 pursuant to Division Bench judgment. So far as the period from 20.6.1997 to 27.12.1999 is concerned, the petitioner was rightly not paid any salary etc for this period on the principle of no work for no pay because he did not render any service during this period.

I have heard learned counsel for the petitioner Shri R.S. Saluja and learned Dy. Government Advocate Shri Rameshwar Dave appearing for the respondents and perused the record.

Learned counsel for the petitioner Shri R.S. Saluja has argued that once when the order of termination is found illegal, the consequential relief of paying wages must follow as a matter of course unless there are reasons justifying its denial. He has argued that the petitioner was not at fault if he could not work during the period from 20.6.1997 to 27.12.1999, therefore, the principle of no work for no pay could not be invoked in his case. Learned counsel for the petitioner Shri R.S. Saluja in this

connection relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Manorma Verma (Smt.) Vs. State of Bihar & Ors reported in 1995 SCC (L&S), 193 wherein in para no.4, their Lordships held as under: -

> "Ordinarily, the consequential order of grant of back wages must follow, unless there are reasons on record which would justify a departure from the normal order. We do not see any reasons on record to come to the conclusion that the appellant was not entitled to back wages. There is also nothing on record to show that during the period she was out of service, she was gainfully employed elsewhere. In the circumstances we allow this appeal and set aside that part of the High Court's order by which the appellant was denied back wages and award her back wages from the date of termination of service till she was reinstated in service under the impugned order of the High Court."

Learned Dy. Government Advocate Shri Rameshwar Dave has argued that analogy applicable to the case of the termination order being found illegal and the consequential grant of back wages would not apply to the facts of the present case because while setting aside the earlier removal order, the Division Bench did not deem it appropriate to grant back wages but remanded the matter back to the disciplinary authority. The Division Bench left this question to the discretion of the disciplinary authority. Learned Dy. Government Advocate has further argued that payment of back wages shall not be an automatic consequence

of order of termination being found illegal. He has placed reliance on a recent judgment of the Hon'ble Supreme Court in the case of U.P. State Brassware Corporation Ltd. & Anr. vs. Uday Narain Pandey, reported in 2006 (1) SCC 479. The Hon'ble Supreme Court in this case was dealing with the argument that payment of back wages was an automatic consequence when an order of termination is held unsustainable. The Hon'ble Supreme Court in para 22 of the said judgment observed as under:-

> "22.No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."

While dealing with the same issue in the case of General Manager, Haryana Roadways vs. Rudhan Singh, reported in (2005) 5 SCC p.591, the Hon'ble Supreme Court in para 7 observed as under :-

> "7.In our opinion certain factors, which are relevant for forming an opinion regarding award of back wages, have been completely ignored and, therefore, the award on this point is vitiated. The list of dates given in the special leave petition, which have not

> been controverted, show that though according to the own case of the respondent his services had been terminated on 28.2.1989, yet he served a demand notice praying for reinstatement in service after two-and-a-half years on 24.8.1991. The State Government made reference to the Industrial Tribunal-cum-Labour Court in the year 1997, which means eight years after the termination of service. Normally, a reference should not be made after lapse of a long period. A labour dispute should be resolved expeditiously and there is no justification for the State Government to sleep over the matter and make a reference after a long period of time at its sweet will. It causes prejudice both to the workman and also to the employer. It is not possible for an employer to retain all the documents for a long period and then to produce evidence, whether oral or documentary, after years, as the officers, who may have dealt with the matter, might have left the establishment on account of superannuation or any other reason. The employer is not at fault if the reference is not made expeditiously by the State Government, but it is saddled with an award directing payment of back wages without having taken any work from the workman concerned. The plight of the workman who is thrown out of employment is equally bad as it is a question of survival for his family and he should not be left in a state of uncertainty for a long period."

I have examined the present matter in the light of the law enunciated by the Hon'ble Supreme Court. In the present case, when earlier order of removal of the petitioner was subjected to judicial scrutiny by the Division Bench of this Court, the Court did not grant payment of salary to the petitioner for the period from the date of his removal till the date of passing of the judgment as would be evident from the following order passed by the Division Bench reproduced by the petitioner

in para no.2 in the writ petition : -

> "This appeal is allowed. The order of punishment is set aside and the petition is partly allowed. The appellate order dated 13.11.97 Anexure-13 to the petition is set aside. The order of the disciplinary authority dated 20.6.97 in respect of award of the punishment only is set aside and the disciplinary authority District Superintendent of Police, Jodhpur is directed to proceed to consider passing of the previous record of the appellant to him and after affording him opportunity to make submission on the same. The question of consequential benefits for the period from 20.6.97 till date of this order shall also be decided by the disciplinary authority alongwith question as to how the period of suspension would be treated while passing the order afresh."
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> (emphasis supplied)

The legality or otherwise of the entitlement of the petitioner to receive salary for the period consequent upon his removal being found illegal could have been decided in the proceedings wherein the removal order was under challenge. When the Division Bench of this Court in its wisdom left this question to the discretion of the disciplinary authority to decide whether or not, the petitioner should be granted salary of the disputed period, the disciplinary authority while considering the length of his service took a lenient view in awarding fresh penalty and did not deem it appropriate to grant salary for the period in question. The disciplinary authority, however, at the same time, granted him full salary and allowances etc. from

28.12.1999 when he was reinstated till the passing of order of penalty. It is trite law that back wages will not follow automatically as a matter of course in every case where removal is held illegal by the court. It would always depend upon the facts and circumstances of each case. In the present case, the disciplinary authority having considered seriousness of the charges against the petitioner, the length of service of the petitioner and the fact that by the subsequent order of penalty, he was being awarded lessor punishment of compulsory retirement and was being paid full salary and allowances etc. subsequent to his reinstatement till the passing of such order, simultaneously, decided not to grant him salary for the period from his earlier removal till the date of reinstatement on the principle of no work for no pay. I do not find any error in the order impugned because the Divisoin Bench of this Court while setting aside the order of removal had remanded the matter back to the disciplinary authority and the left the question of salary and allowance etc for such period t his discretion. Hence, the impugned order 6.9.2000 does not suffer from any kind of non-application of mind and arbitrariness.

For the reasons aforesaid, the writ petition is dismissed. No order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-